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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

SEP 29 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Cable Television  
Consumer Protection and Competition  
Act of 1992

Broadcast Signal Carriage Issues

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) MM Docket No. 92-259  
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**EMERGENCY MOTION FOR PARTIAL STAY**

The Wireless Cable Association International, Inc. ("WCA") and the National Private Cable Association ("NPCA"), by their attorneys and pursuant to Section 1.3 of the Commission's Rules, hereby move the Commission to stay the October 6, 1993 effective date of the portion of newly-adopted Section 76.64(e) of the Rules that requires a wireless cable or private cable system operator providing the residents of single family homes and multiple dwelling units with access to VHF/UHF signals through rooftop antennas at no charge to nonetheless secure retransmission consent from local broadcasters if the operator retains ownership and control over those antenna facilities.

Specifically, WCA and NPCA urge the Commission to maintain the *status quo* and exclude from retransmission consent those wireless cable and private cable systems that provide access to VHF/UHF rooftop antennas at no charge, regardless of antenna ownership, until the Commission has an opportunity to address the May 3, 1993 petition in which WCA seeks reconsideration of the *Report and Order* (the "R&O") in the captioned proceeding and proposes modifications to Section 76.64(e) (the "Reconsideration Petition").<sup>1</sup> For the

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<sup>1</sup>*Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 2965 (1993)[hereinafter cited as "R&O"].

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convenience of the Commission, a copy of the Reconsideration Petition is annexed as Attachment A.

As adopted in the *R&O*, Section 76.64(e) provides that:

Provision of local broadcast signals by master antenna television (MATV) facilities or by VHF/UHF antennas on individual dwellings is not subject to retransmission consent, provided that these signals are available without charge at the residents' option. That is, the antenna facilities must be owned by the individual subscriber or building owner and not under the control of the multichannel video programming distributor.

In the interest of brevity, WCA and NPCA will refrain from repeating in detail the arguments advanced in the Reconsideration Petition. It should be stressed, however, that neither WCA nor NPCA objects to the first sentence of Section 76.64(e); any wireless cable or private cable system operator that charges for access to local broadcast signals should be required to secure retransmission consent from local broadcasters. What the Reconsideration Petition addresses is the second sentence of Section 76.64(e), which unnecessarily and unwisely forces wireless cable and private cable operators that own rooftop VHF/UHF antennas and yet do not charge for access either to secure retransmission consent from all local broadcasters or divest themselves of ownership of their antenna facilities.

Despite the passage of almost five months since the Reconsideration Petition was first filed, WCA and NPCA understand from discussions with members of the Commission's staff that the Commission will not be addressing the Reconsideration Petition prior to the October 6, 1993 effective date of Section 76.64(e). Under these circumstances, it is essential that the Commission stay that portion of Section 76.64(e) that forces wireless cable and private cable operators that retain ownership of VHF/UHF rooftop antenna facilities to secure

retransmission consent despite the fact that residents have access to the broadcast signals for free.

It is well established that a stay is to be granted where (1) the movant is likely to prevail, (2) there will be irreparable harm if the stay is not granted, (3) the stay would cause little harm to other interested parties, and (4) the stay would serve the public interest.<sup>2</sup> Each of those factors is present here.

First, the Commission is likely to grant the Reconsideration Petition when it is ultimately addressed on the merits. As WCA establishes in the Reconsideration Petition, the second sentence in Section 76.64(e) unnecessarily increases the cost of service to consumers, while hampering the emergence of competitive alternatives to cable. Since the second sentence has these adverse impacts, and does nothing to advance the regulatory goals of retransmission consent, the Commission is likely to eliminate it when it finally rules upon the Reconsideration Petition.

Second, there can be no doubt that irreparable harm will occur if the stay is not granted.<sup>3</sup> If Section 76.64(e) is not partially stayed prior to October 6, many wireless cable and private cable operators will have no choice but to vest title in their VHF/UHF antenna

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<sup>2</sup>See, e.g. *Washington Area Transit Commission v. Holiday Tours*, 559 F.2d 841 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass'n v. FPC*, 295 F.2d 921 (D.C. Cir. 1958); *Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, FCC 93-361 (rel. July 28, 1993).

<sup>3</sup>Although a showing of irreparable harm is generally believed to be a prerequisite to the issuance of a stay, the Commission has stayed new rules pending reconsideration even when irreparable harm has not been shown. See *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, MM Docket No. 86-406, FCC 87-248 (rel. July 17, 1987).

facilities in their subscribers and building owners. While many local broadcasters are being reasonable in their retransmission consent negotiations with wireless cable and private cable system operators, others are not.<sup>4</sup> Given the importance of local broadcast signals to consumers, many wireless cable and private cable operators will be forced by competitive pressures to divest themselves of title to antenna facilities, rather than trap out the signal of local broadcasters that refuse retransmission consent. The inevitable asset abandonment the Commission has inadvertently forced clearly constitutes irreparable harm.<sup>5</sup>

In some cases, wireless cable and private cable system operators may find it difficult to divest themselves of antenna facilities, as building owners may be loath to undertake the signal leakage and other responsibilities attendant to system ownership. In such cases, the operators will have no choice but to trap out the signal of any local broadcaster that refuses retransmission consent, imposing unrecoverable costs and depriving residents of the affected buildings with access to broadcast signals. In a time when many rely on local broadcasters as their primary source of news, information and entertainment, those denied access to local

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<sup>4</sup>Affiliates of Fox, for example, are engaging in blatant discrimination in favor of cable systems and against alternative technologies in their retransmission consent negotiations. Apparently at the directive of the network, these affiliates are granting cable operators retransmission consent at no cost, provided they subscribe to the new Fox X network for \$0.25 per subscriber. Fox X, however, is not being made available to alternative technologies -- it has been declared "cable exclusive." Wireless cable and private cable operators are being told they must pay the same \$0.25 for retransmission consent from local Fox broadcast affiliates, but that they cannot secure Fox X.

<sup>5</sup>In *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allocated to the Specialized Mobile Radio Pool*, 8 FCC Rcd 3974 (1993), the Commission recently stayed the effective date of new rules pending reconsideration where the new rules would have resulted in licensees forfeiting their authorizations.

broadcast signals will be irreparably harmed. Moreover, the forced deletion of broadcast signals in circumstances where property owners do not accept the operator's divestiture of the ownership of the facilities may itself trigger a default of the service contract governing the property which often specifies the broadcast signals which must be available for free. If operators are expelled from properties as a result of such forced defaults, competition by alternative service providers will be decreased, not increased -- a result wholly contrary to the Congressional intent underlying the 1992 Cable Act.

Third, it is difficult to conceive of a situation in which the stay will cause cognizable harm to any legitimately interested party. Significantly, no broadcaster has opposed WCA's Reconsideration Petition. Since retransmission consent is intended solely to benefit broadcasters, and since the broadcasters are not opposed to the Reconsideration Petition, it is evident that the broadcasters would not be harmed by a delay in a partial stay of Section 76.64(e) pending action on the Reconsideration Petition.

Fourth, and most importantly, the public interest will be served by grant of a stay pending reconsideration. For the reasons set forth above and in the Reconsideration Petition, it is clear that absent a stay, the ability of wireless cable and private cable operators to provide subscribers with an economical, diverse and fully-competitive source of programming will be sorely hampered -- a result that the Commission repeatedly has recognized to be inconsistent with the public interest.<sup>6</sup>


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<sup>6</sup>See, e.g. *Implementation of Section 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage*, 8 FCC Rcd 3359 (1993).

In short, a stay of the effective date of newly-adopted Section 76.64(e) is warranted by the facts and the law. Indeed, stays pending reconsideration have been granted under circumstances far less compelling than those present here.<sup>7</sup> Therefore, WCA and NPCA urge the Commission to grant this motion and order a stay pending resolution of WCA's petition for reconsideration of the *Report and Order*.

Respectfully submitted,

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<sup>7</sup>See *Amendment of Section 73.202(b)*, 2 FCC Rcd 6132 (1987); *Amendment of Section 73.202(b)*, MM Docket No. 87-289, DA 88-1063 (rel. July 11, 1988); *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, MM Docket No. 86-406, FCC 87-248 (rel. July 17, 1987).

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**PETITION FOR PARTIAL RECONSIDERATION**

**THE WIRELESS CABLE ASSOCIATION  
INTERNATIONAL, INC.**

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**May 3, 1993**

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## EXECUTIVE SUMMARY

The Commission should reconsider and revise the rules adopted in the *Report and Order* for establishing the circumstances under which a wireless cable operator will be required to secure retransmission consent from local broadcasters. Specifically, the Commission should amend newly-adopted Section 76.64(e) of the Rules to delete the requirement that a wireless cable operator that retains ownership and control of the VHF/UHF antenna it installs at the subscriber's premises must secure retransmission consent, even if the operator can establish that it does not charge for the local broadcast signals.

As written, Section 76.64(e) will compromise the economic viability of many wireless cable systems. Many wireless cable operators provide free VHF/UHF antenna facilities to subscribers who do not already have an adequate antenna. To the best of WCA's knowledge, no wireless cable operator imposes a higher monthly charge on subscribers that require a VHF/UHF antenna than those that supply their own.

The cost of installing VHF/UHF antennas at a subscriber's home is substantial, but ameliorated by the fact that the antenna can be reused at another site should the subscriber terminate service. The practical effect of Section 76.64(e) is to require the operator to transfer title of VHF/UHF antennas to subscribers, eliminating the potential for reuse. Indeed, Section 76.64 may inadvertently result in a substantial increase in subscriber churn as consumers learn they can subscribe to wireless, receive a free VHF/UHF antenna, and then terminate service while retaining the antenna. However, because of competitive pressures, wireless cable operators will not be able to increase installation fees or raise monthly subscription rates. Thus, wireless cable operators will be required to bear this additional cost.

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**PETITION FOR PARTIAL RECONSIDERATION**

The Wireless Cable Association International, Inc. ("WCA"), by its attorneys and pursuant to Section 1.106 of the Commission's Rules,<sup>1</sup> hereby petitions the Commission to reconsider in part the *Report and Order* (the "*R&O*") in the captioned proceeding.<sup>2</sup> Specifically, WCA urges the Commission to revise newly-adopted Section 76.64(e) of the Rules to eliminate the requirement that a wireless cable system operator secure retransmission consent from local broadcasters merely because the operator retains ownership and control over the VHF/UHF rooftop antennas it employs to provide its subscribers access to locally available broadcast signals at no charge.

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<sup>1</sup>47 C.F.R. § 1.106 (1992).

<sup>2</sup>*Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, FCC 93-144, MM Docket No. 92-259 (rel. March 29, 1993)[hereinafter cited as "*R&O*"].

**I. WCA SUPPORTS THE FUNDAMENTAL POLICY OBJECTIVES OF THE *REPORT AND ORDER*.**

At the outset, the Commission should note that WCA is generally supportive of the fundamental policy decisions reflected in the *R&O* as they relate to the wireless cable industry. WCA certainly has no quarrel with the Commission's decision to impose retransmission consent obligations on wireless cable operators who utilize their Multipoint Distribution Service ("MDS") or Instructional Television Fixed Service ("ITFS") facilities to retransmit local broadcast signals.<sup>3</sup> Indeed, in its initial comments in response to the *Notice of Proposed Rule Making* in this proceeding, WCA acknowledged that wireless cable operators who retransmit broadcast signals over their microwave facilities must be subject to retransmission consent under the Congressional scheme embodied in Section 6 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act").<sup>4</sup>

Where WCA and the Commission part company, however, is with regard to the Commission's imposition of retransmission consent obligations in certain circumstances on wireless cable operators who install rooftop VHF/UHF transmission antennas to receive local broadcast signals at the premises of those subscribers who do not already have adequate VHF/UHF antenna facilities.

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<sup>3</sup>See *R&O*, *supra* note 2, at ¶ 135.

<sup>4</sup>See Comments of Wireless Cable Ass'n Int'l, MM Docket No. 92-259, at 3 (filed Jan. 4, 1993).

Although the *Notice of Proposed Rule Making* provided no advance warning that such a rule was under consideration, under newly-adopted Section 76.64(e) a wireless cable operator that employs rooftop VHF/UHF antennas to receive local broadcast signals must nonetheless secure retransmission consent unless two criteria are met: (i) the signals must be made available at no charge; and (ii) the VHF/UHF antenna must be under the ownership and control of the individual subscriber or building owner.

WCA continues to believe that Congress did not intend for retransmission consent obligations to attach when a multichannel video programming distributor integrates non-broadcast programming with local broadcast programming received at the subscriber's premises using a VHF/UHF antenna.<sup>5</sup> Nonetheless, WCA does not seek reconsideration of the first element of the Commission's two-prong test, the "no charge" requirement. However, WCA submits that it is essential for the Commission to eliminate the requirement that the wireless cable operator who meets the "no charge" test still divest itself of ownership and control of the VHF/UHF antenna in order to avoid retransmission

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<sup>5</sup>See *id.* at 3-4 n. 8. Indeed, WCA finds it difficult to believe that Congress intended for some of the more absurd results that Section 76.64(e) will bring about. For example, imagine a market with five local broadcast television stations, four of which give the wireless cable operator retransmission consent. If the wireless operator retains ownership of its VHF/UHF antennas, it will have to trap out the signal of the broadcaster who failed to grant retransmission consent. Wireless cable subscribers who then desire access to that signal will have to purchase their own VHF/UHF antenna, duplicating the equipment that is already on the rooftop.

consent obligations. Simply put, this is an unnecessary requirement that will increase the cost of wireless cable service to consumers and/or hamper wireless cable operators in their efforts to compete with franchised cable.

**II. IMPOSITION OF RETRANSMISSION CONSENT REQUIREMENTS ON WIRELESS CABLE OPERATORS WHO RETAIN OWNERSHIP OR CONTROL OF VHF/UHF ANTENNAS INSTALLED AS AN AMENITY WILL UNDERCUT THE CONSUMER BENEFITS OF COMPETITION TO CABLE.**

The installation of VHF/UHF antennas at subscribers' premises is a common practice in the wireless cable industry. As a general proposition, a wireless cable operator will rely on rooftop reception of local broadcast signals in order to preserve scarce MDS and ITFS spectrum for the transmission of non-broadcast programming that cannot otherwise be delivered to subscribers' homes. Wireless cable systems generally refrain from retransmitting local broadcast signals over MDS and ITFS spectrum so long as the broadcaster is able to deliver a signal of sufficient quality throughout the wireless cable service area. By and large, it is only when a popular broadcast signal is not readily received throughout the wireless cable service area that retransmission over MDS and ITFS spectrum occurs.

When a wireless cable system operator has decided to rely on rooftop reception of local broadcast signals, the installer determines at the time of installation whether adequate VHF/UHF antenna facilities exist at a given single family home or multiple dwelling unit. If acceptable VHF/UHF antenna facilities are in place, then those facilities are retained and integrated with the MDS/ITFS

reception facilities installed by the operator, providing the consumer with seamless access to all available channels. If the single family home or multiple dwelling unit lacks adequate VHF/UHF antenna facilities (as is often the case when wireless cable service is replacing a franchised cable offering), the operator provides a VHF/UHF antenna. That VHF/UHF antenna facility is provided as an amenity -- to the best of WCA's knowledge, no wireless cable operator imposes a greater monthly charge on those subscribers that are provided a VHF/UHF antenna than is charged consumers who supply their own VHF/UHF antenna.<sup>6</sup>

Where it is necessary for a wireless cable operator to install VHF/UHF antenna facilities, the additional investment can be \$100.00 or more depending on the characteristics of the antenna required and the installation requirements at the particular site.<sup>7</sup> Although some of that cost (e.g. labor) is sunk, the antenna itself is recoverable and can be reused should the subscriber terminate service. The importance of that fact cannot be underscored enough, for the recoverability of

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<sup>6</sup>Indeed, when a wireless cable operator gains entry to a multiple dwelling unit setting that lacks VHF/UHF reception facilities, the operator is frequently required to provide local broadcast television signals to all residents, whether or not they subscribe to the wireless cable offering. Of course, the fact that the wireless cable operator incorporates the broadcast signals into the basic package provided its subscribers does not change the fact that those signals are offered at no charge when others can secure access to a free broadcast-only service.

<sup>7</sup>Internal wiring requirements can add to this cost substantially, particularly in multiple dwelling unit environments where local broadcast signals must be made available to all residents.

equipment upon termination of service is an important reason why VHF/UHF antennas could be supplied at no additional charge to consumers who need them.<sup>8</sup>

The effect of the *R&O* is to compromise the financial ability of wireless cable operators to provide this amenity, however. As a practical matter the Commission's retransmission consent rules now will force many wireless cable operators to vest ownership of any VHF/UHF antennas in the subscriber immediately upon installation, preventing reuse upon termination of service. Adverse economic consequences will certainly flow from this change in circumstances.

In most situations, the wireless cable operator will not be able to increase its installation charge to recoup the cost of the VHF/UHF antenna facilities. Generally, installation fees are set by the local competitive environment; *i.e.* the wireless cable operator must charge an installation fee that approximates that charged by its franchised cable competitor. Because the cost of installing a marginal wireless cable subscriber is greater than the cost of installing a marginal franchised cable subscriber, and because franchised cable operators generally set their installation fees at cost or below, a wireless cable operator is virtually never able to fully recover its installation costs with an installation fee. At best, a

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<sup>8</sup>In many cases, these consumers had VHF/UHF antennas installed on their rooftops until they subscribed to cable. Many cable operators dismantled those antennas, while in other cases they fell into disrepair because they were no longer being used by the consumer.

wireless cable operator recovers the sunk costs of installing a new subscriber (*e.g.* marketing, installation labor, non-reusable equipment) through the installation fee and recover the costs of reusable equipment over time.

By increasing the cost of that non-reusable equipment as much as \$100.00 or more per subscriber, the *R&O* will have a devastating impact. Subscriber churn is a serious problem for all multichannel video programming distributors. While wireless cable operators hope to reduce churn from franchised cable levels through superior customer service, improved signal quality and innovative programming, factors such as subscriber relocation, financial pressures and competitive alternatives make churn inevitable. The Commission has now exacerbated the problem by giving consumers incentive to subscribe to wireless cable, receive a free VHF/UHF antenna, then terminate service and keep the antenna.

As a result, the Commission has inadvertently placed the wireless cable operator between the Scylla of increasing installation fees substantially above those charged by franchised cable to deter such conduct and the Charybdis of increasing monthly service charges to all subscribers to recoup losses from nonrecoverable VHF/UHF antenna costs caused by a few. One or the other is essential; unless additional revenues can be generated to compensate for the transfer of VHF/UHF antenna ownership to subscribers, the financial viability of wireless



cable systems will be compromised. Yet, neither alternative is acceptable; either will adversely impact wireless' ability to effectively compete in the marketplace.

### **III. NO POLICY OBJECTIVE IS ADVANCED BY SECTION 76.64(E)'S "OWNERSHIP AND CONTROL" TEST.**

Reconsideration of the *R&O* is especially appropriate because the "ownership and control" test of Section 76.64(e) is not grounded in any substantial policy objective. Indeed, the *R&O* is silent as to why ownership or control over the VHF/UHF antenna facilities should be at all relevant to whether retransmission consent is required. In explaining the rationale behind Section 76.64(e), the Commission makes analogies to both the *First Report and Order* in Docket No. 20561 and Section 111(a) of the Copyright Act of 1976.<sup>9</sup> While both precedents provide some scant support for the imposition of the "no charge" prong of the test, neither offers any support for the making of ownership or control of the VHF/UHF antenna a determinative factor.<sup>10</sup>

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<sup>9</sup>See *R&O*, *supra* note 2, at ¶ 135 nn. 375, 376.

<sup>10</sup>In its 1977 *First Report and Order* in Docket No. 20561, the Commission was faced with determining whether master television antenna ("MATV") systems should be subject to the Commission's rules applicable to cable systems. In that decision, the Commission determined that any facility "that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control or management" would be subject to the cable rules. See *Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems*, 63 F.C.C.2d 956, 997 (1977). Although the *First Report and Order* does make reference to the fact that MATV service is generally provided at no charge to residents as an amenity, who owned or controlled the MATV system was not  
(continued...)

As best as WCA can fathom, it appears that the Commission imposed the ownership and control test in the belief that it was necessary to assure that the local broadcast signals were being provided at no charge.<sup>11</sup> That is simply not the case -- there is a much simpler mechanism for assuring that a wireless cable operator who retains ownership and control of the VHF/UHF antenna facilities it installs does not charge for the local broadcast signals. The Commission can make clear that a wireless cable operator who chooses to retain ownership and control of the VHF/UHF antenna facilities it installs must not impose an additional installation fee<sup>12</sup> or monthly charge as a result. Compliance can be readily monitored by local

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<sup>10</sup>(...continued)

deemed to be of import. Thus, while the *First Report and Order* can be cited to support the decision to exempt wireless cable operators who provide a VHF/UHF antenna at no charge from retransmission consent, the *First Report and Order* does not support limiting the exemption to wireless cable operators who divest themselves of ownership and control of the antenna facility.

The same is true with respect to Section 111(a). Under Section 111(a), an MATV system is deemed not to infringe on copyright when it distributes programming at no charge to residents of a dwelling. While that system must be provided by the management of the building, Section 111(a) has never been interpreted in such a way that ownership or control of the system is relevant. As with the *First Report and Order*, while Section 111(a) can be cited to support the decision to exempt wireless cable operators who provide a VHF/UHF antenna at no charge from retransmission consent, it does not support limiting the exemption to wireless cable operators who divest themselves of ownership and control of the antenna facility.

<sup>11</sup>See *R&O*, *supra* note 2, at ¶135.

<sup>12</sup>The Commission should not, however, alter the practice of a few wireless cable operators who sell VHF/UHF antennas to subscribers for a fee. In those cases, because  
(continued...)

broadcasters, for wireless cable rates are widely available in the community. It should be simple for a wireless cable operator to establish that its rates are identical regardless of whether the subscriber or the wireless cable operator provides the VHF/UHF antenna.

**IV. IF VHF/UHF ANTENNA OWNERSHIP IS RELEVANT, THEN THE COMMISSION SHOULD ADOPT RULES GOVERNING THE TRANSFER OF TITLE UPON TERMINATION OF SERVICE MODELED ON ITS NEW HOME WIRING RULES.**

There is some suggestion in Paragraph 135 of the *R&O* that the "ownership and control" test was developed out of a concern over continued reception of local broadcast signals after wireless cable service is terminated. WCA finds that concern ironic, given that the Commission has never acted to prevent franchised cable operators from removing their subscribers' existing VHF/UHF antennas when installing cable service. Nor does WCA see how that concern is relevant for retransmission consent purposes -- so long as no charge is being made for the service today, there is no justification for the Commission to impose retransmission consent requirements merely because free access may terminate sometime in the future.

Be that as it may, there is a less intrusive mechanism for assuring that wireless cable subscribers can continue to receive locally available broadcast

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<sup>12</sup>(...continued)  
title to the equipment vests in the consumer immediately upon sale, the additional fee is not objectionable.

signals upon termination of service. The appropriate model was adopted in the recent *Report and Order* in MM Docket No. 92-260 -- the cable home wiring proceeding.<sup>13</sup> In that proceeding, the Commission adopted Subpart M of Part 76, which permits a cable operator to retain ownership and control over inside cabling, provided that it offers to sell that wiring to the subscriber upon termination of service at replacement cost.<sup>14</sup> WCA would not object if the Commission adopts a similar requirement here. Under such an approach, a wireless cable operator could retain ownership and control over its VHF/UHF antenna facilities and still avoid retransmission consent obligations, so long as the operator permits the subscriber to purchase the antenna at replacement cost upon termination of service.

WHEREFORE, for the foregoing reasons, WCA urges the Commission to reconsider the *R&O* and amend Section 76.64 by deleting the second sentence thereof so that no retransmission consent will be required when a wireless cable operator installs a rooftop VHF/UHF antenna used to access local broadcast signals at no charge, even if the operator maintains ownership and/or control over the antenna facilities. In the alternative, the Commission should rule that no retransmission consent will be required when a wireless cable operator maintains

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<sup>13</sup>See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 1435 (1993).

<sup>14</sup>*Id.* at 1443.

ownership and/or control over the VHF/UHF antenna used to access local broadcast signals at no charge, so long as the subscriber has the right to purchase the antenna facilities upon termination of service.

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